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SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1914.

No. 569.

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

W. J. MURRAY, JOHN McSWEEN, ADOLPHUS N. WOOD, AVERY PATTON, AND JAMES S. BRICE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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a-40 UNITED STATES OF AMERICA, 88:

At a United States Circuit Court of Appeals for the Fourth Circuit Begun and Heid at the Court House, in the City of Richmond, on the First Tuesday — May, Being the Sixth Day of the Same Month, in the Year of our Lord One Thousand Nine Hundred and Thirteen.

Present:

Hon. J. C. Pritchard, Circuit Judge. Hon. Benjamin F. Keller, District Judge. Hon. Henry G. Connor, District Judge.

Among other were the following proceedings, to-wit:

CAROLINA GLASS COMPANY, Plaintiff in Error, versus

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

Be it remembered that heretofore, to-wit: on January 10, 1913, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

41 & 42 On the same day, to-wit: January 10, 1913, the original petition for a writ of error, order allowing writ of error, writ of error bond and citation, were certified up to this Court in pursuance of Sec. 7 of Rule 14.

Same day, appearance of D. W. Robinson and Lyles & Lyles, is

entered for the plaintiff in error.

January 17, 1913, appearance of W. F. Stevenson and B. L. Abney, is entered for the defendants in error.

January 28, 1913, twenty-five copies of the printed record are

filed.

May 9, 1913 (May Term, 1913), cause came on to be heard before Pritchard, Circuit Judge, and Keller and Connor, District Judges, and is argued by counsel and submitted.

July 10, 1913 (May Term, 1913), the Court announced and filed

its opinion, which is as follows, to-wit:

Opinion.

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Filed July 10, 1913.

43 United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error, versus

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

[Argued May 9, 1913; Decided July 10, 1913.]

Before Pritchard, Circuit Judge, and Keller and Connor, District Judges.

J. B. S. Lyles and D. W. Robinson (Lyles & Lyles and J. T. Seibels on brief) for plaintiff in error, and W. F. Stevenson and B. L. Abney (C. L. Prince on brief) for defendants in error.

PRITCHARD, Circuit Judge:

This was an action at law instituted by the Carolina Glass Company, plaintiff in error (hereinafter referred to as plaintiff), against W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S.

Brice, defendants in error (hereinafter referred to as defendants), to recover the sum of \$19,084.38 alleged to be due plaintiff by the several county Dispensary Boards of South

Carolina.

When the case came on for trial the parties by written stipulation waived a jury trial, and the facts were found by the court below as

follows:

"The complaint is in the nature of an action against the individual defendants for moneys by them had and received, and which moneys they ought ex æquo et bono to refund to the plaintiff as its property. The defendants were at one time members of the State Dispensary Commission, appointed under the Act approved 16 of February, 1907 (Stats. S. C., Vol. XXV, p. 855), and as such received a sum of money in the agent viz.

by the testimony in the case, viz:

"By an Act approved 16 February, 1907 (Stats. of S. C., Vol. XXV, p. 463), the General Assembly of South Carolina enacted that wherever at the election in the Act provided for any county voted in favor of the sale of alcoholic liquors and beverages it should be lawful that the same should be sold in such county; and that thereupon a Board should be appointed to be known as the 'County Dis-

pensary Board,' who were authorized and required to establish Dispensaries in the County for the sale of alcoholic liquors and beverages under the forms and limitations prescribed in the Act.

Act also provided:

"Sec. 6. The members of the said County Dispensary Board are hereby declared to be County Officers and are hereby authorized and empowered under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made.'

SEC. 11. Each Dispenser shall daily deposit to the credit of the County Board, in a bank designated by the Board, all moneys re-

ceived by him from sales.'

"'SEC. 13. All sales shall be for cash and at a profit to be deter-

mined by the Board.'

"By Sec. 18, it is provided that the County Dispensary Board should quarterly in each year make a sworn statement of the profits and at the same time divide and pay out the profits as so ascertained in the proportion fixed by the Act of various

public county purposes. "The Act appointed a State Dispensary Commission although a separate act was approved on the same day as this last mentioned Act provided for County Dispensary Boards, viz: 16 of February, Under the Act of 16 of February, 1907, creating the State Dispensary Commission the Commission so created was directed to close out the entire business of the State Dispensary as carried on by the State prior to 16 of February, 1907, collect all debts due, and pay all just liabilities of the State growing out - the said business. The Commission was given full power and authority to investigate This act of 1907 the past conduct of the affairs of the Dispensary. was amended in 1908 so as to give the Commission full power to pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary and to pay for the State any and all just claims which have been submitted to and determined by it and no other. (Stats, S. C., Vol. XXV, p. 1293.)

"The plaintiff in this case had furnished the State with bottles and demijohns used in the business of the State Dispensary as carried on prior to 16 of February, 1907, and had a claim therefor against the State for \$23,013.75. This claim the plaintiff presented to the State Dispensary Commission, who, after investigation, found that in pursuance of a conspiracy between some of the directors of the State Dispensary and some of the plaintiff's officers or agents to defraud the State the latter had paid the plaintiff on glassware purchased between 1902 and April, 1906, a price exceeding the fair market value thereof by \$51,432.94. Therefore allowing plaintiff's claim of \$23,013.75, the Commission found that plaintiff was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claims and the sum it had fraudulently collected

from the State prior to April, 1906.

"From this decision of the Commission an appeal was taken under

the provisions of the Act of 1907 to the Supreme Court of South Carolina. This appeal was heard by that court, which on 17th of November, 1910, rendered its decision held that the plaintiff had no claim against the State. That court held further:

"The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by ap-

pellant.

"And again:
"'So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted except through the courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff it is unconstitutional, null and void." Carolina Glass Co. v. State of S. C., 87 S. C., 270.

"In the meantime, and after the creation of the County Dispensary Board under the Act of 16 of February, 1907, the plaintiff from time to time furnished the County Dispensary Board for Richland County glassware under purchases made from it by that Board, and on 23 of February, 1910, there was admittedly due to the plaintiff for these purchases the sum of \$4,963.13. On the 23 of February, 1910 (Stats. S. C., vol. XIV, p. 876), by an Act of the General Assembly of South Carolina, approved that day it was provided:

"'Sec. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.'

Subsequent to the 23rd of February, 1910, and between that date and 13th of December, 1910, the plaintiff delivered to the County Dispensary Board for Richland County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which added to the \$4,963.13 due on 23rd of February, 1910, made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

"On that day, viz., 13 of December, 1910, the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State Dispensary Commission under the circumstances stated in the receipt given for the same, viz:

" 'COLUMBIA, S. C., Dec. 13, 1910.

"'Received from the Richland County Dispensary Board the sum of seventeen thousand five hundred and fifty 07-100 (\$17,550.07) dolars. Being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Comapny, which amount is paid to the State Dispensary Commission upon its demand made in pursuance of the provisions of the Act of the General Assembly entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February, 1910; and in pursuance of the judgment of the Supreme Court in the case of the Carolina Glass Company vs. Dr. W. J. Murray, et al.

"STATE DISPENSARY COMMISSION,

"'By W. J. MURRAY, Chairman.

" '\$17,550.07."

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"On the 22 of November, 1910 (after the filing of the opinion of the Supreme Court of South Carolina in Glass Company v. State of S. C.), the plaintiff in this case gave the defendants personal notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

"On receiving this amount of \$17,550.07 the defendants held it until 27 of March, 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants who has ceased to

"The contention of plaintiff is that this amount of \$17,550.07

was a fund to which plaintiff is and was entitled, and it came
into the hands of the defendants on 13 of December, 1910,
under circumstances which fully notified the defendants that
ex æquo et bono they were bound to pay it to plaintiff and that the
action of defendants in turning it over on 27 of March, 1911, to
their successors in office was tortious and unlawful after the notice
of 22 of November, 1910, and leaves defendants personally responsible for the amount.

"The jurisdiction of this court is invoked on the ground that the Act of 23 of February, 1910, is in contravention of Section 10, Art. 1, of the United States Constitution as impairing the obligation of the contract whereby under the Act of 16 of February, 1907, the County Dispensary Board was bound to pay to plaintiff the amount admittedly due for the glassware furnished by it, and is further in contravention of the XIVth Amendment of the United States Constitution in that it seeks without due process of law to take the amount of \$17,550.07 admittedly due to plaintiff and arbitrarily apply it to the payment of a contested claim made by the State, not yet judicially established, for \$28,419.24 against the plaintiff."

The court below after having found the facts, also discussed at some length the merits of the case. But at the same time reached the conclusion that this was a suit against the State, and dismissed the same for want of jurisdiction.

There are seven assignments of error. However, in view of the action of the lower court in dismissing the same for want of jurisdiction, we only deem it necessary to consider the fifth, which is in the following language:

"That the court erred in ruling as a matter of law, upon the undisputed facts, that this suit is a suit against the State of South Carolina and to which the said State is a necessary par-y, and so is within the express prohibition of the 11th Amendment of the Constitution of the United States.

"Whereas, the court should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in Section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and therefore, afforded no protection or color of authority for the illegal acts of the defendants."

In order to determine whether this is a suit against the State, we must ascertain to whom the fund of \$17,550.07 belonged, both before and after it reached the hands of the defendants.

Section 6 of the Acts of 1907 authorizes and empowers County Boards in the name, and under the authority of the State to buy in any market, and to retail within the State, liquors and beverages. If the liquor and beverages were purchased by the Dispensary Board in pursuance of this act, it necessarily follows that in so doing, such boards were acting for, and on behalf of the State, and any purchases made, or funds realized from the sale of the same in pursuance thereof, thereby became the property of the State and subject to its control as such. The fact that the county dispensary boards are declared to be county officers in no wise affects the ownership of the State of any property that may have been purchased by such boards. The State has as much right to constitute county officers its agents as it would to employ any other person or persons to act in its behalf in the transaction of its business, and this is precisely what it did in this instance. The mere designation of these officials as county officers could not deprive the State of any right to property which it may have purchased through them while they were acting in pursuance of authority granted by the State. A careful examination of the constitution, as well as the act of South Carolina as respects the Dispensary, clearly shows that it was the policy of that State to retain complete control over the purchase and sale of liquors as well as the title to the same.

Among other things, it is provided by the act in question that the State shall not be liable beyond the actual assets of the Dispensary for which the purchases are made. The foregoing clearly indicates that while the State stands back of the Dispensary Board in the pur-

chase of goods, yet, it is not liable for any debts that such boards may have incurred in excess of the actual assets of the Dispensary.

This was a precautionary measure, intended to protect the State in cases where the Board should attempt to contract debts beyond the amount of assets, and was notice to the world that the State would only pay such debts as were not in excess of

the assets of the Dispensary.

These provisions clearly indicate that it was the purpose of the Legislature to make the Dispensary Board subordinate to, and under the control of the State in all particulars, and at all times, so long as they continued in business; and among other things, it is provided that after certain expenses are paid, and the proportion allotted to the county was set apart for that purpose, that any net profits were to be accounted for to the State, and retained by it as its property.

The Supreme Court of the State of South Carolina in construing Section 6 of the Acts of 1907, held that these County Dispensaries were conducted under the authority, and in the name of the State.

This question was before the Supreme Court of that state in the case of State v. Dispensary Commission, 79 S. C., 325, the court, among other things, said: "The General Assembly may require the public funds or any part of them to be put in any place, or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent for the disbursement of these funds to its creditors." And also in the case of State v. Dispensary Commission, 79 S. C., page 326, the Supreme Court of that State quoted with approval the ruling of the Supreme Court of the United States in the case of Buchanan v. Alexander, 4 Howard, 20, in which that court said, that, "so long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the Treasurer."

The Supreme Court of the United States in the case of Murray v. Wilson Distilling Company, 213 U. S., page 151, referring to the provisions of the Constitution and statute of that state as respects the

Dispensary question, said:

"If we consider as an original question the provisions of the Constitution of South Carolina on the subject and the terms of the statutes of that State establishing the Dispensary System, we think it is apparent that the purchases which were made by the State

officers, or agents, of liquor for consumption in South Carolina, were purchases made by the State for its account, and, therefore, that the relation of debtor and creditor arose from such transactions between the State and the persons who sold the liquor. And this irresistible conclusion, arising from the very face of the constitution and statutes, is removed beyond all possible controversy by the decision of this court in Vance v. Vandercock, No. 1, supra, and by the construction given by the Supreme Court of South Carolina to the State statute prior to the commencement of this litigation, in State v. Farnum, supra, as well as by the convincing opinion expressed by that court in reviewing the state statutes in the mandamus case already referred to as reported in 79 S. Car., 316.

"We could not therefore sustain the exercise of jurisdiction by

the Circuit Court without in effect deciding that the State can be compelled by compulsory judicial process to perform a contract obligation. It is certain that at least by indirection, the bills of complaint sought to compel the State to specifically perform alleged contracts with the vendors of liquor by paying for liquor alleged to have been supplied. But it is settled that a bill in equity to compel the specific performance of a contract between individuals and a State cannot, against the objection of the State, be maintained in a court of the United States. Thus, in Hagood v. Southern, 117 U. S., 52, where, in suits brought in a court of the United States against officers and agents of the State of South Carolina, the holders of certain revenue scrip of the State endeavored to enforce the redemption thereof according to the terms of the statute, in pursuance of which the scrip was issued, which statute was alleged to constitute an irrepealable contract, the court said:

"Though not nominally a party to the record, it (the State) is the real and only party in interest, the nominal defendants being the officers and agents of the State, having no personal interest in the subject-matter of the suit, and defending only as representing the State. And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the State. The State is not only the real party to the controversy, but the real party against which relief is sought by the suit; and the suit is, therefore, substantially within the prohibition of the Eleventh Amendment of the Constitution of the United States, which declares that "The judicial power of the United States shall not be construed

to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign State" The absence in the winding up act of a provision conferring authority to review in the ordinary courts of justice the action of the commission concerning claims, instead of supporting the contention that the State had abandoned all property right in the funds placed in the hands of the commission, tends to a contrary conclusion since it at once suggests the evident purpose of the State to confine the determination of the amount of its liability to claimants, to the officers or agents chosen by the State for that purpose. And it is elementary that even if a State has consented to be sued in its own courts by one of its creditors, a right would not exist in such creditor to sue the State in a court of the United States. Smith v. Reeves, 178 U. S., 436, and cases cited; Chandler v. Dix, 194 U. S., 590. The situation, therefore, was not changed as a result of the subsequent act of February 24, 1908, giving the creditors of the State, whose claims might be adversely acted upon by the commission, the right to a review in the Supreme Court of the State."

We have carefully considered the authorities relied upon by plaintiff, but are of the opinion that they do not apply to the case at bar.

In view of the decisions of the Supreme Court of South Carolina, as well as the decision of the Supreme Court of the United States,

we are impelled to the conclusion that the State is a necessary party to this action. Such being the case, the ruling of the lower court in dismissing the same for want of jurisdiction was eminently proper.

For the reasons stated, the judgment of the lower court is affirmed.

Affirmed.

53 & 54 Same day, to-wit: July 10, 1913, the Court made and entered the following judgment, to-wit:

Judgment.

Filed and Entered July 10, 1913.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

W. J. MURRAY, JOHN McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this

cause, be, and the same is hereby affirmed with costs.

J. C. PRITCHARD, Judge.

July 10th, 1913.

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Afterwards, to-wit: August 11, 1913, the mandate of this Court is issued and transmitted to the said District Court of the United States for the Eastern District of South Carolina, at Charleston.

Same day, the original petition for a writ of error, order allowing writ of error, and writ of error bond, certified up to this Court, are returned to the said District Court in accordance with Sec. 7 of Rule 14.

Petition for Writ of Error and Order Allowing Same.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

Considering itself aggrieved by the final decision of the United States Circuit Court of Appeals for the Fourth Circuit in rendering judgment against it in the above entitled case, the plaintiff in error, Carolina Glass Company, hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a costs bond.

Assignment of errors herewith.

WM. H. LYLES, D. W. ROBINSON, LYLES & LYLES,

Attorneys for Plaintiff, Carolina Glass Company.

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Order of Allowance.

UNITED STATES CIRCUIT COURT OF APPEALS, Fourth Circuit, 88:

Let the writ of error issue upon the execution of a bond by the Carolina Glass Company to the defendants in error above named, in the sum of two hundred and fifty (\$250) dollars.

J. C. PRITCHARD, Judge United States Circuit Court of Appeals for Fourth Circuit.

May 7th, 1914.

Assignment of Errors.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having same reviewed in the Supreme Court of the United States, makes the following assignments:

1. That the United States Circuit Court of Appeals for the Fourth Circuit erred in ruling and deciding that this suit is a suit against the State of South Carolina, and that the State is a necessary party to this action. Whereas, the said United States Circuit

59 & 60 Court of Appeals for the Fourth Circuit should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in contravention of Section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and therefore, afforded no protection or color of authority for the illegal acts of the defendants.

2. Because said United States Circuit Court of Appeals for the Fourth Circuit erred in affirming the ruling and judgment of the District Court of the United States for the Eastern District of South Carolina in dismissing the Complaint for want of jurisdiction upon the ground that the State of South Carolina is a necessary party to

this action.

3. Because said United States Circuit Court of Appeals for the Fourth Circuit was without jurisdiction to render judgment in the cause, since the case was one in which the writ of error should have been taken from the District Court of the United States for the Eastern District of South Carolina direct to the Supreme Court of the United States, and the jurisdiction of the said latter Court was exclusive under and by virtue of Section 5 of the Judiciary Act of March 3rd, 1891, now appearing as Section 238 of the Judicial Code, approved March 3rd, 1911.

Wherefore, Carolina Glass Company, the plaintiff in error, prays that the judgment of the United States Circuit Court of Appeals for the Fourth Circuit be reversed and vacated, and that said United

States Circuit Court of Appeals for the Fourth Circuit be directed to issue its mandate to the District Court of the United States for the

Eastern District of South Carolina, directing said latter 61 & 62 Court to enter judgment in favor of the plaintiff in error in this cause against the said defendants, W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice and each and every of them, for the sum of seventeen thousand, seven hundred and fifty and 7/100 (\$17,750.07) dollars, together with interest thereon from the 13th day of December, 1910, at the rate of seven

per cent. per annum and for the costs.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff in Error,
Plaintiff in Lower Court.

Bond.

Filed May 7, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1156.

CAROLINA GLASS COMPANY, Plaintiff in Error,

W. J. MURRAY, JOHN McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants in Error.

Know All Men by These Presents, That we, Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, are firmly held and bound unto W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice in the sum of two hundred and fifty (\$250) dollars, to be paid to said parties, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of April, 1914.

Whereas the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to 63 & 64 reverse the judgment rendered in the above entitled action by the Circuit Court of Appeals for the Fourth Circuit,

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

In Witness Whereof, the said Carolina Glass Company, as principal, and United States Fidelity — Guaranty Company, as surety,

have hereunto set their hands and affixed their seals, this 25th day of April, A. D., 1914.

CAROLINA GLASS COMPANY. [L. s.]

By RAVENELS, PATTERSON,

Its Manager, as Principal. UNITED STATES FIDELITY & GUAR-

ANTY COMPANY, By ROBT. MOORMAN,

A. W. BOLLIN,

Its Attorneys in Fact, as Surety.

[Seal of U. S. Fidelity & Guaranty Co.]

In the Presence of:

CARRIE YOUNGINER,

W. M. RISER,

As to Carolina Glass Company.

J. H. BOLLIN, JR., S. A. MILLFORD,

As to United States Fidelity & Guaranty Company.

STATE OF SOUTH CAROLINA, Richland County:

Personally appears W. M. Riser, who being duly sworn, says that she saw Carolina Glass Company, by Ravenel S. Patterson, its Manager, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned, and that she with Carrie Younginer witnessed the execution thereof.

W. M. RISER.

Sworn to before me, this the 1st day of May, A. D. 1914. W. S. WILSON, SEAL. Notary Public for S. C.

65 & 66 STATE OF SOUTH CAROLINA, Richland County:

Personally appears S. S. Millford, who being duly sworn, says that he saw United States Fidelity & Guaranty Company, by A. W. Bollin and Robert Moorman, its Attorneys in Fact, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned and that he with J. H. Bollin Jr. witnessed the execution thereof. S. A. MILLFORD.

Sworn to before me, this the 2nd day of May, 1914. J. HUGHES COOPER, SEAL. Notary Public for S. C.

Bond approved:

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J. C. PRITCHARD, U. S. Circuit Judge.

May 7th, 1914.

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Writ of Error.

Issued May 7, 1914.

UNITED STATES OF AMERICA, 88:

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error hath happened, to the great damage of the said plaintiff, Carolina Glass Company, as by its complaint appears. We being willing that Company, as by its complaint appears. error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the said Supreme Court, the 7th day of May, in the year of our Lord

one thousand nine hundred and fourteen.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY, Clerk United States Circuit Court of Appeals for the Fourth Circuit.

68 Allowed by:

J. C. PRITCHARD,

United States Circuit Judge for the Fourth Circuit.

May 7th, 1914.

Service of Writ of Error.

Copy of writ of error for adverse party lodged in the Clerk's Office this 7th day of May, 1914.

HENRY T. MELONEY,

Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

[Endorsed:] The United States of America. Carolina Glass Company, Plaintiff, vs. William J. Murray, John Mc-Sween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Writ of Error. Filed May 7, 1914. Henry T. Meloney, Clerk.

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Citation.

Issued May 7, 1914.

UNITED STATES OF AMERICA, 88:

To William J. Murray, John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the United States Circuit Court of Appeals for the Fourth Circuit, wherein Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. C. Pritchard, Circuit Judge of the United States for the Fourth Circuit, this 7th day of May, in the year of our

Lord one thousand nine hundred and fourteen.

J. C. PRITCHARD, United States Circuit Judge for the Fourth Circuit.

71 [Endorsed:] The United States of America. Carolina Glass Company, Plaintiff, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Citation. Filed May 7, 1914. Henry T. Meloney, Clerk.

Service of the within Citation acknowledged and copy retained, this May 11, 1914, not waiving, but reserving to the State, its right to object to the issuance of said writ, or any proceedings thereunder, as also to the jurisdiction of the Court to hear and determine this case upon such writ of error.

B. L. ABNEY,

Attorney for Defendants in error.

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Clerk's Certificate.

UNITED STATES OF AMERICA, 88:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit at Richmond, this 19th day of May A. D. 1914.

[Seal United States Circuit Court of Appeals, Fourth District.]

HENRY T. MELONEY, Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

Endorsed on cover: File No. 24,313. U. S. Circuit Court Appeals, 4th Circuit. Term No. 569. Carolina Glass Company, plaintiff in error, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice. Filed July 16, 1914. File No. 24,313.

TRANSCRIET OF RECORD

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No. 1 205

ROLINA GLASE COMPANY PLAINTIFF IN ERROR.

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NAMES OF THE PROPERTY COURT OF THE UNITED STATES BOR.
THE PARTEEN PROPERTY OF SOUTH CAROLINA.

TILED JULY 10, 1914.

(24,314)

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SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1914.

No. 570.

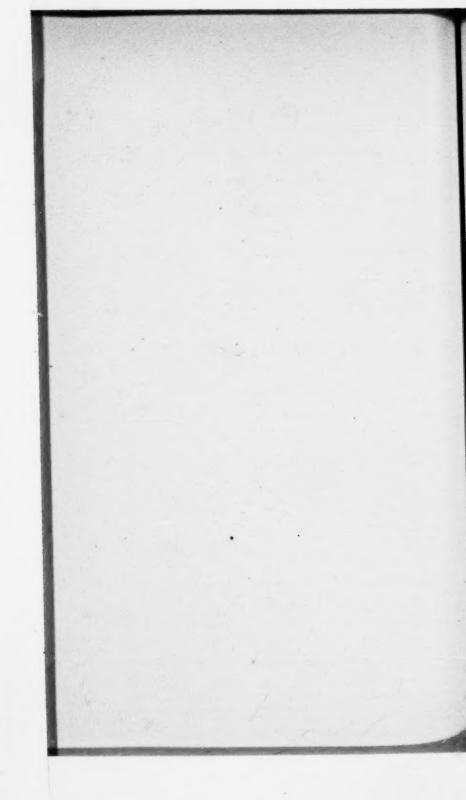
CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR.

418

WILLIAM J. MURRAY, JOHN McSWEEN, ADOLPHUS N WOOD, AVERY PATTON, AND JAMES S. BRICE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

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Transcript of Record.

THE UNITED STATES OF AMERICA, Eastern District of South Carolina, To wit:

At a District Court of the United States for the Eastern District of South Carolina, Begun and Held at the Court House, in the City of Charleston, S. C., on the First Tuesday of June, Being the 4th Day of the Same Month, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present: The Honourable Henry A. M. Smith, District Judge, for the Eastern District of South Carolina.

Among other were the following proceedings, to-wit:

In Equity.

CAROLINA GLASS COMPANY, Complainant, versus

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants.

Complaint.

Filed December 13, 1911.

UNITED STATES OF AMERICA,

District of South Carolina:

In the Circuit Court.

CAROLINA GLASS COMPANY, Plaintiff,

W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, Defendants.

The plaintiff above named, complaining of the above named defendants, alleges:

named defendants, alleges.

1. That the plaintiff is, and was at the times hereinafter named, a corporation duly organized and existing under the laws of the State of South Carolina, having its principal place of business at the State of Columbia, in said State; and having been, and still being, engaged in the business of manufacturing and selling glass bottles, demijohns, etc.

2. That at the times hereinafter named, the defendants above named constituted the State Dispensary Commission, having been duly appointed and qualified by his Excellency, the Governor of

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the State of South Carolina, under an Act entitled "An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs," approved the 10th day of February, 1907, and the subsequent Acts of the General Assembly of

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the State of South Carolina amendatory thereto.

3. That by an Act of the General Assembly of the State of South Carolina entitled "An Act to declare the law in reference to and to regulate the manufacture, sale, use, consumption, possession, transportation and disposition of alcoholic liquors and beverages within the State, and to police the same," approved the 16th day of February 1907, County Dispensary Boards were duly established for the counties of Clarendon, Richland, Beaufort and Georgetown, in the State of South Carolina, with authority to purchase glass bottles and demijohns for the conducting of the bottling and selling of liquors, beers, etc. Under the provisions of said statute and by the authority conferred by the said Act and Acts amendatory thereto, the said several County Dispensary Boards purchased from this plaintiff, from time to time, supplies of such glass bottles, demijohns, etc., as were needed for their business aforesaid.

4. That by section 6 of said Act, amongst other things, it

was provided:

"That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made. The members of the County Dispensary Board and all Dispensaries shall be persons of known moral character and not directly or indirectly applicants for appointment."

And by the ninth section thereof it was provided:

"The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the preceding month, and cause the same to be published once in some newspaper published in the county during that week."

And by the eleventh section thereof it was provided:

"Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all monies received by

him from sales."

And by the eighteenth section thereof it was provided that on the first days of January, April, July and October, in every year, the County Dispensary Board should file with the clerk of court a sworn statement of the profits of each Dispensary in the county for the three months preceding said dates, and should pay over, as in said section provided, the said profits. But it was nowhere provided in said Act that any part of the assets, whether representing liabilities or profits of the said several County Dispensary Boards, should, under any circumstances, be paid over to the State of South Carolina, or in anywise be covered into the treasury of said State. And this plaintiff alleges that it was contemplated by the said Act that

the funds of the said several County Dispensary Board should be kept as trust funds, for the discharge first of all liabilities incurred by said several County Dispensary Boards, and that only the profits then remaining should be paid out or distrib-

uted by the said several County Dispensary Boards.

5. That pursuant to said Act, a Dispensary Auditor was appointed by the Governor of the State of South Carolina, with power to audit the accounts of said several County Dispensary Boards and to prescribe the system of bookkeeping, etc.

6. That at the times hereinafter named, there were balances due by the said several County Dispensary Boards to this plaintiff, as

follows, to-wit:

Ionows, water	\$96.47
By the Clarendon County Dispensary Board	17,550.07
- Total - I County Thenensary Dualty	40
By the Georgetown County Dispensary Board	
	440 004 90

\$19,084.38 Making a total of ...

all of which claims had been duly audited and approved by the said Dispensary Auditor for the State of South Carolina, and the said several County Dispensary Boards held the funds appropriated and ready to pay over to this plaintiff in satisfaction of said several

7. That for several years prior to the year 1906, this plaintiff balances. sold and delivered under regular contracts to the State Dispensary glass bottles, demisohns, etc.; and during the year 1906 and in the early part of the year 1907, under contracts made with the Board of Directors of the State Dispensary, sold and delivered to it bottles, demijohns, etc., of the value of ninety-nine thousand one hundred and eight dollars (\$99,108.00), according to the special bids

then and there entered into, all previous contracts of the said State Dispensary having been cancelled by a joint resolu-5 tion of the General Assembly of the State of South Carolina at its session of 1906, upon which there was a balance due to this plaintiff of twenty-three thousand and thirteen and 75/100 dollars (\$23,-

013.75), which is still due and unpaid.

8. That the said State Dispensary Commission having been organized and proceeding under the Act approved the 24th day of February, 1908, this plaintiff filed with the said State Dispensary Commission a statement of its claim of twenty-three thousand and thirteen and 75/100 dollars (\$23,013,75) and offered evidence to show the validity and justice of the same.

9. That thereafter, to-wit, on the 17th day of November 1909, the said State Dispensary Commission filed its finding or judgment upon the said claim, which, after reciting certain proceedings, pro-

ceeded as follows, to-wit:

"The Commission finds that the total amount of sales after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was \$613,437. Of this amount the sum of \$99,108.00 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated \$514,329,90.

"The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was \$51,432.99, which should be and is hereby offset against the claim in favour of said Carolina Glass Company, to-wit: its claim for \$23,013.75, which, being deducted from the amount of said over-charges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of

"Whereupon judgment is rendered in accordance with the fore-

going findings. "Signed this November 17th, 1909.

"W. J. MURRAY-No. "JOHN McSWEEN-No. "A. N. WOOD. "AVERY PATTON. "J. S. BRICE."

10. That this plaintiff submits that no question of the right of the State of South Carolina against said plaintiff on account of transactions prior to 1906, by offset, counter-claim or otherwise, was before the said State Dispensary Commission by any notice or other pleading of any character, and that the said Commission, being a court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, had no power to consider the supposed claim of the State of South Carolina against the claimant on account of transactions which had occurred prior to the year 1906. And this plaintiff avers the finding of said State Dispensary Commission and its so-called overjudgment, or

of no effect whatever. 11. That this plaintiff since the organization of the County Dispensaries had been selling to certain of them bottles for their use, and on or about the 20th day of November 1909, had orders for the prompt shipment of such bottles to the County Dispensary for the County of Richland, and to the County Dispensary for the County of Aiken, and others, and on or about said date, learning through the newspapers of the State of South Carolina that his Excellency, the Governor of the State, at the instance and request of

judgment for the balance of \$28,416.24, wholly null and void and

the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensaries, directing them to withhold the amounts that might be due by the said County Dispensaries to certain persons and corporations, this plaintiff caused its attorneys, Messrs. John T. Seibels and Wm. H. Lyles, on its behalf to approach his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney General of the State of South Carolina, and to state to them the condition of affairs with reference to such orders, and that plaintiff's said counsel were referred by the Governor and the Attorney General to W. F. Stevenson, Esq., who was said to have charge of the matter in question. And, thereupon, on said 20th day of November 1909, one of plaintiff's counsel, Mr. Wm. H.

Lyles, called up the said W. F. Stevenson, Esq., then at Cheraw, in the State of South Carolina, over the long-distance telephone, and stated to him, in substance, the conversations which had occurred between him and Mr. John T. Seibels on the one side, and the Governor and Attorney General on the other, and was informed by the said W. F. Stevenson, Esq., that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November 1909, and being requested by the said Wm. H. Lyles to give him such statement in writing the said W. F. Stevenson, Esq., on the said 20th day of November 1909, wrote to plaintiff's said attorney a letter, as follows, to-wit:

"Stevenson & Matheson, "Attorneys at Law,

"CHERAW, S. C., Nov. 20, '09.

"Mr. Wm. H. Lyles, Att'y., Columbia, S. C.

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xof "My Dear Sir: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned. I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we hav-n't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

"Yours most truly,

"W. F. STEVENSON.
"Cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon."

12. That in pursuance of the agreement and understanding so arrived at, and relying implicitly thereon, this plaintiff continued

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to sell to, and ship to, certain of the said County Dispensaries goods needed for their purposes without ever having received any notice of any intimation from the said defendants, or any one else, that the understanding and agreement so reached would be terminated or violated, until on the 26th day of February 1910, there were due to this plaintiff the following sums from the following named County Dispensaries on account of goods so sold and shipped after the said 20th day of November 1909, to-wit:

From the County Dispensary for the County of Richland. \$4,963.13 From the County Dispensary for the County of George-660.68 705.41 From the County Dispensary for the County of Aiken.. 26.70 From the County Dispensary for the County of Beaufort.

\$6,355.92 Aggregating the sum of . . .

which sums, except the sum due by the County Dispensary for the County of Aiken, are embraced in the balances due to this plaintiff as alleged in paragraph six of this complaint, this plaintiff having subsequently delivered the additional amounts of glass bottles, demijohns, etc. to the County Dispensaries alleged in paragraph six of

this complaint.

13. That the said defendants, undertaking to proceed under section 6 of the Act entitled "An Act to further pro-10 vide for winding up the affairs of the State Dispensary," approved the 23rd day of February 1910, as this plaintiff is informed and believes, demanded from the County Dispensary Boards for the County of Clarendon, the County of Richland and the County of Georgetown, the sums of money alleged in paragraph six of this complaint, amounting in the aggregate to the sum of nineteen thousand and eighty-four and 38/100 dollars (\$19,084.38) then due to this plaintiff by said several County Dispensary Boards, as alleged in said paragraph six, and unlawfully and wrongfully received the said sums of money from said several County Dispensary Boards, claiming that they were entitled to the same on account of the above mentioned illegal offset found by said State Dispensary Commission to be due by this plaintiff as aforesaid; which action this plaintiff alleges was wholly without authority of law, as the provisions of said section 6 of the Act of February 23rd, 1910 were unconstitutional, null and void, as constituting an offort, unwarrantably and without authority, to confiscate the property of this plaintiff without due process of law, the provisions of said section being in violation of section 10 of Article I. of the Constitution of the United States, and also of the Fourteenth Amendment to the Constitution of the United States; and, furthermore, in violation of the express contract and agreement entered into by this plaintiff with the defendants above named as above alleged.

14. The said defendants have refused, and still refuse to pay over to this plaintiff the said several sums of money so wrongfully taken by them from said several County Dispen-11 sary Boards as aforesaid, and this plaintiff has not access to the books of said several County Dispensary Boards and cannot allege the dates upon which the same were taken, but alleges that they were

taken during the year 1910.

Wherefore, this plaintiff demands judgment against the said defendants, and each and every of them, for the said sum of nineteen thousand and eighty-four and 38/100 dollars (\$19,084.38), with interest on the several sums constituting said sum from the respective dates when they were received by said defendants, together with the costs of his action.

LYLES & LYLES, JNO. T. SEIBELS. D. W. ROBINSON, Attorneys for Plaintiff.

Summons.

Filed Dec. 13, 1911.

The United States of America, District of South Carolina, in the Circuit Court, Fourth Circuit.

CAROLINA GLASS COMPANY, Plaintiff,

W. J. MURRAY, JOHN McSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Defendants.

To W. J. Murray, John McSween, A. M. Wood, Avery Patton and J. S. Brice, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribers at their offices, 600-603 Nat. Loan & Exch. Bk. Bldg., Columbia,

S. C., on or before Rule Day, occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid, the plaintiff will apply to the Court for the relief demanded in the

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Columbia, S. C., the fifth day of December, Anno Dimini, one thousand nine hundred and eleven and in the 136th year of the sovereignty and independence of the United States of America.

LYLES & LYLES, D. W. ROBINSON JOHN T. SEIBELS, Plaintiff's Attorneys.

C. J. MURPHY. [SEAL.] C. C. C. U. S., Dist. S. C.

Marshal's Return of Service.

The marshal's return of service shows that the defendants Dr. W. J. Murray, John McSween, Avery Patton and J. S. Brice, were served personally on the 14th and 18th days of December, 1911, with a copy of the summons and complaint, and on the defendant A. N. Wood by leaving same with his son-in-law, Thos. B. Butler, who resided in his dwelling in the Town of Gaffney, S. C.; the said A. N. Wood, being temporarily in the State of Minnesota, by handing to and leaving a true and correct copy thereof with

him, the said Thos. B. Butler, Personally, on the 18th -13 December 1911.

Joint and Several Answer of Defendants.

Filed February 5, 1912.

United States of America, District of South Carolina, in the District Court, Fourth Circuit.

CAROLINA GLASS COMPANY, Plaintiff, against

W. J. MURRAY, JOHN McSWEEN, A. N. WOOD, AVERY PATTON, and J. S. Brice, Defendants.

The defendants above named, jointly and severally answering the complaint herein,-

For a First Defense:

1. Admit the allegations contained in paragraphs one and two of

the complaint.

2. Admit the allegations contained in paragraph three of the complaint, except so far as the same may be in conflict with the Act of the General Assembly therein referred to.

3. Admit the allegations contained in paragraph four of the complaint, except so far as the same may be in conflict with the terms and provisions of the Act therein referred to, and a proper construc-

tion thereof. 4. Admit the allegations contained in paragraph five of the com-

plaint.

5. Admit the allegations contained in paragraphs eight and nine

of the complaint.

6. Deny the allegations contained in paragraph ten of the complaint, so far as the same may be deemed allegations of 14

fact, and deny the conclusions of law therein made.

7. Deny the allegations contained in paragraphs six, seven, eleven, twelve, thirteen and fourteen of the complaint, except as is herein specifically admitted to be true, and with regard to such allegations these defendants allege that said defendants, constituting the State Dispensary Commission, having been organized and proceeding under the Act approved the 24th day of February 1907, being the same Act mentioned in the said complaint, the plaintiff filed with the State Dispensary Commission a statement of its claim of \$23,-013.75, and presented the same for examination, determination and payment; that the said Commission went into an investigation and examination of said claim as between the said company and the State, and after careful examination and consideration of the evidence produced before it, both for and against the claim, did ascertain and determine that the said claim was invalid and untrue, and did, on the 17th day of November 1909, reject the same in an opinion and decision, an extract from which is set out in paragraph nine of the complaint, and further found, as therein appears, that by reason of the transactions therein stated the said Carolina Glass Company, the plaintiff herein, was, after deducting said claim from the amount of the overcharges, indebted to the State of South Carolina in the sum of \$28,419.24, but these defendants, as said Commission or as individuals, had no knowledge of the state of the accounts or transactions of the plaintiff with the County Dispensary Boards, nor did they take any action with reference to the collection of what

had been ascertained and found to be due the State by said plaintiff on account of its transactions with such County Dispensary Boards, but these defendants have been informed and believe that, at the time the defendants, as said Commission, rendered their judgment in the case of the Carolina Glass Company, on the 17th of November 1909, the said company was due by the State,

through the County Dispensary Boards, as follows:

Unrough the sound	\$1,399.51
Orangeburg County Dispensary Board	572.81
	926.90
	3,363.21
Richland County Dispensiony Board	996.13
Fairfield County Dispensary Board	801.07
	470.38
	323.19
	44.51
	386.12
Sumter County Dispensary Board	1,039.84
	96.47
Clarendon County Dispensary Board	
	440 400 11

Total.....\$10,420.14

which said amounts these defendants are informed and advised should, in equity and good conscience, and as a proper and legal application thereof, be returned and applied as a credit to the amount due the State, although not sufficient to have fully discharged the amount due.

These defendants are further informed and believe that, at the time mentioned in the complaint, there were communications between the attorneys for the Glass Company and Mr. W. F. Stevenson, which resulted in the arrangement between the said parties contained in the said letter, which was to the effect that no intercontained in the said letter, which was to the effect that no interference would be made with money coming for shipments made

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from the date of said letter until further notice, and that, with regard to the amounts then due the company, the attorneys would confer together and reach a determination as to what course should

be pursued.

They are further informed and believe that the said Carolina Glass Company did, notwithstanding said agreement and in violation thereof, withdraw from Abbeville, Kershaw, Farefield, Bamberg, Colleton, Barnwell, Sumter and Laurens Counties, every dollar which the County Dispensary Boards of said counties owed to it, amounting to \$4,699.86, which these defendants aver was a violation of said agreement, the said Boards, on account of said agreement, not having been notified to refuse payment of said claims, and the State took no action to protect her interests therein.

That the General Assembly of the State of South Carolina passed an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved February 23, 1910; that in and by said Act the State Dispensary Commission was given certain authority and power therein stated, in addition to the powers theretofore conferred upon it, that the State Dispensary Commission, after rendering its judgment on November 17, 1909, upon the claims and matters examined, investigated and heard, did, as stated above. take no action, as a body or individually, with regard to the enforcement of said finding and judgment, except as hereinabove stated, but that upon the approval of said Act, it became their duty to convene and to carry into effect the provisions and requirements of said Act, and that they did so convene on the 26th, day of February 1910, and proceeded to the discharge of their duties under the last mentioned Act, as well as those heretofore mentioned and of force: that, in pursuance of such requirements of the Act, they did, upon due notice to the Carolina Glass Company, further examine into and consider the transactions and dealings between the State Dis-

pensary and the Carolina Glass Company, and upon such consideration and examination, were of opinion that the State had a just and legal claim against the said Company by reason of such dealings and transactions, of \$28,419.24, after the disallowance of the claim which had been presented to said Commission by

said Carolina Glass Company, and theretofore rejected.

That these defendants, as said Commission, at the same time and acting under the provisions contained in the Act of 1910, did direct the County Dispensary Board of Richland County to withhold payment of any account of the said Carolina Glass Company out of the funds arising from the sales of whiskies, liquors, etc. and did, upon demand, receive from the County Dispensary Board of Richland County the sum of \$17,550.07, but these defendants, as a State commission, neither gave any order nor received any money from the County Dispensary Boards of Georgetown, Beaufort and Clarendon Counties, and they are informed and believe, that, after their removal from office in March 1911, the present State Dispensary Commission, their successors in office, received from the County Dispensary Boards of Georgetown and Beaufort Counties the sum of \$1,437.82.

Subsequent to the approval of the Act of the 23rd. of February 1910, to-wit, on February 26, 1910, there was only due, to the best information and belief that these defendants have, by the County Dispensary Boards, or the State through said Boards, to the Carolina Glass Company, the following:

Richland County Dispensary Board	\$4,963.13
Georgetown County Dispensary Board	000.00
Garandon County Dispensary Board	-00.11
Aiken County Dispensary Board	727.95
-	

Total......\$6,448.23

being a deficit of the amounts due on the 20th. of November 1909, of \$3,971.91, the said Carolina Glass Company having, in violation of the agreement aforesaid, withdrawn said amount.

That upon notice to the said Carolina Glass Company by the Commission under the Act of 1910 of their demand upon the County of Richland for the payment to them of the said sum of money, and of their intention to make demand upon other County Dispensary Boards, the plaintiff herein commenced an action in the original jurisdiction of the Supreme Court of South Carolina against these defendants and others, setting out the same cause or causes of action and complaint, and matters and things as in the complaint herein, and demanding judgment, among other things, that these defendants, and each and every one of them, be enjoined from in any manner demanding or receiving the said sums of money, or any of them, alleged to be due by the said several County Dispensary Boards above named to the plaintiff, and from in any manner interfering with the payment of such sums by the said County Dispensary Boards to the plaintiff, and for such other and further relief, etc.; that at the same time an appeal was taken from the judgment and order of the State Dispensary Commission disallowing the claim presented to it by the plaintiff, to said Supreme Court; that the said cases came on for a hearing before the said Supreme Court at the April term, 1910, and an opinion was rendered by said Court on November 29, 1910, to which reference is craved (87 S. C. 270.) and this court asked to take notice of the law therein declared and the constructions made of the statutes herein referred to. The judgment of that court was that the decision of the Commission upon the plaintiff's claim against the State was affirmed, and that, while these defendants were enjoined from asserting or claiming any lien upon plaintiff's property (real property, situate in Richland County) by virtue of the notice filed in the office of the Clerk of the Court

of Common Please for Richland County, and that said notice be cancelled of record, the court determined all other questions in favour of these defendants and declared that the State Dispensary Commission was the sole arbiter of the rights of the plaintiff, if it has any, with regard to the matters in dispute between

That immediately thereafter these defendants, as the State Dispensary Commission, received from the County Dispensary Board

of Richland County, in pursuance of the notice it had theretofore made and did make upon it, \$17,550.07, being the amount at that time in the hands of said Board of moneys arising from the sale of whiskies, liquors, etc. which was, under the Act of 1910, subject to be paid over as funds of the State, to the State Dispensary Commission, to be held by it as applicable to the claim of the State against the said Carolina Glass Company.

Thereafter a petition for a rehearing was filed in both cases by

the Carolina Glass Company, and was refused.

and claimed in the complaint herein.

That this Commission, upon receipt of said moneys from the County Dispensary Boards, held the same until the 27th. day of March 1911, when they turned the same over to their successors in office as moneys belonging to, and received by them for and on behalf of, the State, and was accepted by their successors in office, the present State Dispensary Commission, as such, and, as they are informed and believe, is now held by them as such.

For a Second Defense.

These defendants allege that, on the 29th, day of November, 1910, in an action brought in the original jurisdiction of the Supreme Court of the State of South Carolina, wherein the plaintiff, Carolina Glass Company, was plaintiff, and these defendants were defendants for the same cause or causes of action alleged in the complaint herein, and the same rights, questions of law and fact were drawn in controversy and necessarily involved, the Supreme Court of said State determined and adjudged, on the merits thereof, each and every right, question of law and fact alleged and claimed in this complaint and herein involved, adversely to the plaintiff and in favour of these defendants, from which decision the plaintiff has not appealed, which said judgment these defendants

For a Third Defense.

submit is conclusive against the plaintiff as to the matters set un

These defendants allege that they were officers of the State of South Carolina at the times mentioned in the complaint, and were acting as such; the County Dispensary Boards of the several counties mentioned in said complaint were officers of the State and acting as such in the performance and discharge of their duties at the times mentioned; that the moneys arising from the sale of intoxicating liquors, wines and beers were moneys in the custody of said County Dispensary Boards belonging to the State, upon which the plaintiff had no lien and had no title, control or possession, or on which there was impressed any trust in its favour as against the State; that each and every act done and taken by these defendants, in demanding and receiving from said County Dispensary Boards the moneys which they held arising from the sale of intoxicating liquors, wines and beers, and holding the same, was done in behalf of the State and by virtue of the powers of their office, and in accordance with the direc-

tions and provisions of the Acts of the General Assembly mentioned in the complaint, which acts these defendants aver to be valid and constitutional and not in conflict with any provision of 21 the State or Federal Constitution, and that the retention by these defendants of said moneys, and the payment over of the same to their successors in office, was done in the performance of their duties as officers of and in behalf of the State, and in accord with the duties imposed upon them by statutes of the State creating the State Dispensary Commission and defining its powers and duties; that they had no individual interest, nor is it claimed by said complaint that they had, or have, in demanding and receiving said moneys or retaining the same, or in refusing to deliver the same to the plaintiff upon tge demands claimed to have been made upon them; all of which acts these defendants allege to have been legal and binding and made as officers of the State under valid statutes of the State, the terms and provisions of which are construed and declared by the Supreme Court in an action brought by the plaintiff against these defendants, and adjudged and determined on the 29th. of November 1910, adversely to the claims of the plaintiff. defendants, therefore, aver that this is a suit or action in fact and in legal effect, against the State of South Carolina, and not against these defendants or either of them except as in their official capacity they represent said State, and therefore is contrary to the provisions of the Constitution of the United States, and this court has no jurisdiction to hear and determine the same.

Wherefore these defendants pray that the complaint herein be dis-

missed.

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February 5, 1912.

J. FRASER LYON,
W. F. STEVENSON,
B. L. ABNEY, AND
WITHERSPOON & SPENCER,
Attorneys for Defendants.

Notice of Motion to File Supplemental Answer.

Filed June 9, 1912.

UNITED STATES OF AMERICA,
District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff, against W. J. Murray and Others, Defendants.

To Messrs. Lyles, D. W. Robinson and J. T. Seibels, Attorneys for Plaintiff, Carolina Glass Company:

Please take notice that on the 4th day of June next, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned

will move the court to be allowed to make a supplemental answer A copy of the proposed supplemental in the above stated case. answer is hereto attached.

J. FRASER LYON, B. L. ABNEY. W. F. STEVENSON. C. E. SPENCER. D'f'd's' Att'ys. Di

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COLUMBIA, S. C., Mr.y 30th, 1912.

No objection being made to the filing of this surplemental answer, it is

Ordered, that defendants have leave to file the same.

HENRY A. M. SMITH, U. S. Judge for S. C.

June 9, 1912.

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Supplemental Answer.

Filed June 10, 1912.

UNITED STATES OF AMERICA, District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff, against

W. J. MURRAY, JOHN McSween, A. N. WOOD, AVERY PATTON and J. S. Brice, Defendants.

Supplemental Answer.

The defendants above named, by leave of the court first had and obtained, make this their supplemental answer to the complaint of

the plaintiff herein, and alelge:

I. That since the commencement of the above entitled action and the filing of the complaint herein, and since the filing of the answer of these defendants therein, the Governor of the State of South Carolina has transmitted the report of the State Dispensary Commission, made to him in accordance with the provisions of law, to the General Assembly of the State of South Carolina, then in session, wherein said Dispensary Commission reported that it held in its hands, belonging to the State and which it had received from the former State Dispensary Commission (these defendants) the sum of \$28,737.95, which included the \$17,550.07 received by this Commission from the County Dispensary Boards and claimed by the plaintiff the Carolina Glass Company.

II. That the attention of the General Assembly of the 24 State of South Carolina, being drawn to the facts and circumstances under which said moneys were collected by the said State Dispensary Commission from the County Dispensary Boards, upon consideration of the same passed a joint resolution entitled "A Joint Resolution to conclude the winding up of the affairs of the State Dispensary," which said joint resolution became effective, in accordance with the terms and provisions of the Constitution, without the approval of the Governor, wherein, by section two of said joint resolution, it was resolved:

That the members of the said State Dispensary Commission do make their final report of all their acts and doings to the Governor and to the General Assembly within thirty days after the passage of this resolution, and that they turn into the State treasury all moneys in their hands arising from the winding up of the affairs of the late

State Dispensary, etc.

And that, in pursuance of the provisions of said joint resolution, the State Dispensary Commission did, on the 21st day of March, 1912, turn over to the State Treasurer \$25,587.01, being the amount they had received from the former State Dispensary Commission, these defendants, less the expenses of the said Commission, and wherein was included the said sum of money collected by these defendants, as the State Dispensary Commission, from the County Dispensary Boards, and mentioned in paragraph seven of their first defense of the original answer; and they are advised that the said amount of money is now held in the treasury of the State of South Carolina.

III. That in and by section four of said joint resolution 25 the Attorney General was directed to take charge of the defense of this suit, instituted by the Carolina Glass Company against W. J. Murray, John McSween, Avery Patton, A. N. Wood and J. S. Brice. For other and further matters contained in said joint resolution, reference is made to it as a part of this supplemental answer.

J. FRASER LYON, B. L. ABNEY W. F. STEVENSON, C. E. SPENCER, Attorneys for Defendants.

May 30th, 1912.

STATE OF SOUTH CAROLINA, County of Richmond:

W. J. Murray, being duly sworn, says that he is one of the defendants in the above entitled action; that he has read the supplemental answer herein, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to them he believes it to be true. W. J. MURRAY.

Subscribed and sworn to before me this May 30, 1912.

G. C. DISMUKES, [L. s.] Notary Public for South Carolina.

Trial for Cause.

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At a stated term of the District Court, begun and held at Charleston, S. C. in the district aforesaid, on the 10th day of June 1912, this case came up for trial before the court, counsel having by stipulation waived a trial by jury. The pleadings were read to the court, and an agreed statement as to what is introduced by each side was taken down by the stenographer.

Arguments were made by Mr. Wm. H. Lyles, Mr. Robinson and Mr. J. B. S. Lyles on behalf of plaintiff, and by Mr. Stevenson, Mr. Abney and Mr. Spencer on behalf of the defendants, and by Mr. Lyles and Mr. Robinson in reply on behalf of the plaintiffs.

The court took the case under advisement.

And thereafter, to wit: On the 17th day of June, 1912, the court entered its opinion and order dismissing the complaint, and which are both set out in full in the bill of exceptions.

Bill of Exceptions.

Filed November 27th, 1912.

United States of America, Eastern District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff,

W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice, Defendants.

Be it remembered that afterwards, to wit, on the tenth day of June, in the year of our Lord 1912, at a stated term of said court begun and holden at Charleston, in and for the Eastern District of South Caroling, before his Honor Henry A. M. Smith.

27 trist of South Carolina, before his Honor Henry A. M. Smith, District Judge, the issues joined in the above stated case between the parties upon the pleadings, came on to be tried before the said judge without the intervention of a jury, the parties aforesaid, by their counsel having, according to the statute in such cases made and provided, waived a jury; plaintiff being represented by D. W. Robinson, Esq., Wm. H. Lyles, Esq., and J. B. S. Lyles, Esq., and the defendants by Hon. J. Fraser Lyon, B. L. Abney, Esq., W. F. Stevenson, Esq., and C. E. Epencer, Esq.

And upon the trial of that issue the defendants presented the following demurrer:

Notice of Grounds of Oral Demurrer.

To Messrs. Lyles & Lyles, D. W. Robinson and John T. Seibels, Attorneys for Plaintiff, Carolina Glass Company:

Please take notice that the defendants, upon the call of this case for trial, will take the objection that the complaint herein does not state facts sufficient to constitute a cause of action. The grounds

of such objection will be as follows:

1. It appears from the face of the complaint that the plaints. has no legal title to or legal interest in the moneys received by defendants from the County Dispensary Boards mentioned therein, and therefore cannot maintain an action at law therefor, and this Whatever interest, if any at all, plaintiff may have, is a legal action.

is equitable.

II. It appears from the face of the complaint that the moneys held by the County Dispensary Boards arose from the sale of whiskey, etc., and not from the goods purchased from the plaintiff, and that such moneys arising therefrom were moneys belonging to the State of South Carolina and not to the plaintiff, and hence no action can be maintained against these defendants by reason of or on account of their receiving as the State Dispensary Commission, the same from said Boards.

III. It appears from the face of the complaint, and the decision of the Supreme Court of the State of South Carolina, of which this court will take judicial cognizance, that the plaintiff is concluded by the judgment of the Supreme Court of the State of South Carolina in the case of Carolina Glass Company against W. J. Murray and others, reported in 87 South Carolina Reports, page 270, and hence the complaint shows no cause of action in favour of the plaintiff

against the defendants.

IV. It appears from the face of the complaint that this is an action against the State to collect an alleged debt, and hence the complaint does not state any cause of action of which this court has jurisdiction.

May 30th, 1912.

B. L. ABNEY, W. F. STEVENSON, C. E. SPENCER, Attorneys for Defendants.

But the Court stated it would hear the whole case before determining the demurrer, and would decide all the issues at one and the same time, and thereupon the attorneys for plaintiff to maintain and prove the said issue on their part offered and put in certain testimony, and upon the close of the plaintiff's testimony the attorneys for the defendants to maintain and prove the issue

on their part offered and put in evidence certain testimony.

After hearing all the testimony the court rendered its judgment embodying its conclusions of law and fact upon the whole case as follows:

Opinion.

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Filed June 19, 1912.

This is an action at law, but the result depending upon questions of law, the parties to the cause have by written stipulation duly signed and filed, waived a jury trial, and the question therefore comes before the Court without a jury for trial and determination. The complaint is in the nature of an action against the individual defendants for moneys by them had and received, and which moneys they ought ex aequo et bono to refund to the plaintiff as its prop-The defendants were at one time members of the State Dispensary Commission, appointed under the Act approved 16 of February, 1907 (Stats. S. C., Vol. XXV, p. 855), and as such received a sum of money under the following circumstances, as appears by the testimony in the cause, viz.:

By an Act approved 16 February 1907 (Stats. S. C. Vol. XXV, p. 463), the General Assembly of South Carolina enacted that wherever at the election in the Act provided for any county voted in favour of the sale of alcoholic liquors and beverages it should be lawful that the same should be sold in such county; and that thereupon a Board should be appointed to be known as the "County Dispensary Board," who were authorized and required to establish Dispensaries in the county for the sale of alcoholic liquors and beverages under the forms and limitations prescribed in the Act.

The Act also provided:

"Sec. 6. The members of the said County Dispensary Board are hereby declared to be County Officers and are hereby au-30 thorized and empowered under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is

"SEC. 11. Each Dispenser shall daily deposit to the credit of the County Board, in a Bank designated by the Board all moneys re-

ceived by him from sales."

"Sec. 13. All sales shall be for cash and at a profit to be deter-

mined by the Board."

By Sec. 18, it is provided that the County Dispensary Board should quarterly in each year make a sworn statement of the profits and at the same time divide and pay out the profits as so ascertained in the proportion fixed by the Act to various public county purposes.

The Act appointing a State Dispensary Commission although a separate Act was approved on the same day as this last mentioned Act providing for County Dispensary Boards, viz., 16 of February 1907. Under the Act of 16 of February 1907, creating the State Dispensary Commission the Commission so created was directed to close out the entire business of the State Dispensary as carried on by the State prior to 16 of February, 1907, collect all debts due, and pay all just abilities of the State growing out — the said business. The Comnission was given full power and authority to investigate the past onduct of the affairs of the Dispensary. This Act of 1907 was mended in 1908 so as to give the Commission full power to pass ipon, fix and determine all claims against the State growing out of dealings with the Dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it and no other (Stats. S. C., Vol. XXV. p. 1293.)

The plaintiff in this case had furnished the State with bottles and demijohns used in the business of the State Dispensary as carried on prior to 16 February, 1907, and had a claim therefor against the State for \$23,013.75. This claim the plaintiff presented to the State Dispensary Commission, who after investigation found that in pur-suance of a conspiracy between some of the directors of the State Dispensary and some of the plaintiff's officers or agents to defraud the State the latter had paid the plaintiff on glassware purchased between 1902 and April 1906, a price exceeding the fair market value thereof by \$51,432.94. Therefore allowing plaintiff's claim og \$23,-013.75 the Commission found that plaintiff was indebted to the State in the sum of \$28,419.24, the difference between the amount of its claims and the sum it had fraudulently collected from the State prior to April 1906.

From this decision of the Commission an appeal was taken under the provisions of the Act of 1907 to the Supreme Court of South Carolina. This appeal was heard by that court, which on 17th November 1910, rendered its decision held that the plaintiff had no

claim against the State. That Court held further:

"The findings of the Commission, however, are controlling only in its determination of the non-liabilty of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding-such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant."

"So long, therefore, as the action of the Commission was And again: 32 confined to the investigation of all dealings, past and present, with the Dispensary, and the determination of the just liabilates of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted except through the courts. We conclude, therefore, that in so far as the Act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff it is unconstitutional, null and void." Carolina Glass Co. v. State of S. C., 87 S. C. 270.

In the meantime, and after the creation of the County Dispensary Board under the Act of 16 of February 1907, the plaintiff from time to time furnished the County Dispensary Board for Richland County glassware under purchases made from it by that Board, and on 23 of February 1910, there was admittedly due to the plaintiff for these purchases the sum of \$4,963.13. On the 23 of February 1910 (Stats. S. C. Vol. XIV, p. 876) by an Act of the General Assembly of South Carolina, approved that day it was provided:

"SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all Boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all County Dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient

amount, or so much thereof as may be on hand, to cover the amount so found to be due the State." Subsequent to 23rd February 1910, and between that date and 13th December 1910, the plaintiff delivered to the County Dispensary Board for Richland County additional supplies of glassware for which there was admittedly due to plaintiff \$12,586.64, which added to the \$4,963.13, due to 23rd of February 1910 made a total of \$17,550.07 admittedly due to plaintiff on December 13, 1910.

to plaintiff on December 13, 1910.

On that day, viz., 13 of December 1910. the County Dispensary Board for Richland County paid the sum of \$17,550.07 to the State Dispensary Commission under the circumstances stated in the receipt given for the same, viz.:

"COLUMBIA, S. C., December 13th, 1910.

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"Received from the Richland County Dispensary Board the sum of Seventeen thousand five hundred and fifty 07/100 dollars (\$17,550.07). Being the amount in the hands of the Richland County Dispensary Board to the credit of the Carolina Glass Company for goods and merchandise bought by the Richland County Dispensary Board from the Carolina Glass Company, which amount is paid to the State Dispensary Commission upon its demand made in pursuance of the provisions of the Act of the General Assembly entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved 23 day of February 1910, and in pursuance of the judgment of the Supreme Court in the case of the Carolina Glass Company vs. Dr. W. J. Murray et al.

"STATE DISPENSARY COMMISSION, "By W. J. MURRAY, Chairman.

\$17,550.07."

On 22 of November 1910 (after the filing of the opinion of the Supreme Court of South Carolina in Glass Co. v. State of S. C.), the plaintiff in this case gave the defendants personally notice that they would be held personally liable for any funds due to plaintiff by any County Dispensary Board which the defendants should hold and not pay over to the plaintiff.

On receiving this amount of \$17,550.07 the defendants held it until 27 of March 1911, when they turned it over to the persons who had been appointed as members of the State Dispensary Commission in succession to the present defendants who had ceased to be such.

The contention of plaintiff is that this amount of \$17,550.07 was a fund to which plaintiff is and was entitled, that it came into the hands of the defendants on 13 of December, 1910, under circumstances which fully notified the defendants that ex aequo et bono they were bound to pay it to plaintiff and that the action of defendants in turning it over on 27 of March 1911, to their successors in office was tortious and unlawful after the notice of 22 of November 1910, and leaves defendants personally responsible for the amount.

The jurisdiction of this Court is invoked on the ground that the Act of 23 of February 1910 is in contravention of section 10, Art I. of the United States Constitution as impairing the obligation of the contract whereby under the Act of 16 of February 1907 the County Dispensary Board was bound to pay to plaintiff the amount admittedly due for the glassware furnished by it, and is further in contravention of the XIVth. amendment to the United States Con-

situation in that it seeks without due process of law to take the amount of \$17,550.07 admittedly due to plaintiff and arbitrarily apply it to the payment of a contested claim made by 35 the State, not yet judicially established, for \$28,419.24 against the

plaintiff.

The defendants object to the jurisdiction of this court on the ground that this action is in effect an action against the State, or to which the State is a necessary party, and plead in bar to the merits that the cause of action set up in the complaint is res adjudicata, having been already adjudicated by the State courts in the cause of Carolina Glass Co. v. State of So. Ca., the decision of the court in

which this case is reported in 87 S. C. p. 270. On this last question the judgment of this court is that the matter is not res adjudicata. By the express terms of the decision referred to the merits of the contention of plaintiff in any affirmative proceeding in any court of competent jurisdiction for a recovery is not passed upon or adjudged. Neither the parties nor the controversy in the case before this court are the same with those in the case before the State Dispensary Commission and the State Supreme Court.

If the facts were as they are presupposed to be by the plaintiff in its pleading this court would find no difficulty in holding as a conclusion of law that so much of the Act of 23 of February, 1910, as may seek by force of the Act itself to divest the plaintiff summarily of any vested right or title acquired by virtue of the Act of 16 of February 1907, or as may seek to take summarily any property belonging to plaintiff and apply it to the State's use, is null and void.

In other words, if the said amount of \$17,550.07 was a fund belonging to the plaintiff-was its property, to which it had title-then the Act of 23 of February 1910, in so far as it 36 attempted to summarily take that fund and give it to the State without proper judicial process was and is null and void under the provisions of the United States Constitution above mentioned.

If, however, the said amount of \$17,550.07 was not a fund to which the plaintiff had such title as to be able to recover it in the proceedings now before this court, but if it was and is the property of the State of South Carolina, then the statute would not be subject

to the prohibitive clauses of the United States Constitution.

Without discussing the principles which govern the right of action in a case for money had and received to the use of another, it is enough to say that in all such cases the plaintiff must establish his title to the particular fund in question as distinguished from a mere claim as a creditor of the person to whom the fund belongs. To illustrate: If A. is a creditor of B. and C. has in his possession funds of B. that would not justify an action by A. against C. for money had and received. A. would have the right only to bring an action against B. to recover his debt and as an incident to that action (if the other circumstances permitted) attach the funds in the hands of C. to answer to the judgment when established. B., however, would be a necessary party to this action.

But if B. had made an assignment to A. of the particular funds in the hands of C. whether before or after it reached his hands, an action for money had and received would lie directly against C.

It is thus evident that upon the question of the plaintiff's title to, interest in or lien upon the particular fund received by the defend-

ants, all other questions in this cause depend:

1. The plaintiff cannot recover in an action for money had and received unless it possesses some title to, interest in or lien upon the particular fund in the hands of the third party

against whom the action is brought.

2. Unless the plaintiff under the Act of 1907 or otherwise had such an interest in, lien upon or title to the specific fund of \$17,550.07 as to give it a definite vested right to it, then Sect. 6 of the Act of 1910 could not operate to divest any such right in concavention of the clauses of the United States Constitution set up in the

complaint.

3. If this fund of \$17,550.07 belonged to the State of South Carolina and the plaintiff was only a creditor of the State of South Carolina and possessed no interest in, lien upon or title to this specific fund then the State of South Carolina would be a necessary party to any judicial proceedings attempting to establish a judgment against the State and by virtue of such judgment when established to subject this fund as the property of the State to the payment of such judgment.

Under the second of these questions a different controversy exists with regard to the \$4,963.13 due on the 23 of February 1910, than with regard to the \$12,586.64 which became due for articles furnished subsequent to that date and furnished therefore with full knowledge and notice of the Act of 23 of February 1910, now complained of as contravening the prohibitive clauses of the United States Constitution. That statute could only contravene those provisions as to contracts made and rights existing prior to its passage.

The contracts for the sale of the articles represented in the claim for \$12,586.64 having been entered into and all rights thereunder having accrued subsequent to the passage of the Act could not have been by it divested or impaired or taken without due process of law.

As, however, if the plaintiff is not entitled to maintain this action for the \$4,963.13 a fortiori it must fail as to the \$12,586.64, it will

not be necessary to discuss them separately in this opinion.

To whom did the fund of \$17,550.07 belong both before and after it reached the hands of defendants? Under Sect. 6 of the Act of 1907 County Dispensary Boards are "authorized and empowered under the authority and in the name of this State to buy in any market and retail within the State liquors and beverages as provided If this were all there would be no doubt that the County Dispensary Board was simply the agent of the State to do as com-If the liquors and beverages were purchased under the authority and in the name of the State, then the State was the purchaser and the owner of the articles when purchased. Necessarily it follows from this that if the State was the purchaser the State was the party liable on the contract to the vendor for the purchase price. Necessarily it also follows that if the State was the purchaser and the owner of the articles when purchased it was also the owner of the proceeds of the same articles when sold by its direction.

It is true that in the first two lines of this section the members of the County Dispensary Board are declared to be "County Officers." There is no reason, however, why the State should not operate, if it sees fit, through or by means of local County Officers who owe

the existence of their office to a State Statute, as well as by means of general State Officers. It might be a question if the officers chose to make it, whether as a County Officer, the performance of a general State duty would be devolved upon him, but if the act performed was one in the name and under the authority of the State, the State would still be the responsible party, notwithstanding it might have been performed by an officer who could not

have been compelled to perform it.

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So, the proviso following the clause above quoted is: "that the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made." The very language of this clause would show that it was intended that the State should be liable upon any contract up to the extent of the actual assets of the County Dispensary for which the purchase was made. If the State was liable then it meant that the State was the vendee, and as such the owner of the property pur-That the liability of the State was limited would not appear to affect this logical sequence. That limitation would appear simply to be notice to any one selling to the County Dispensary on the credit of the State that it must be careful not to sell to that particular County Dispensary Board any articles which exceeded in the cost price the actual assets in the hands of that particular County Dispensary Board. It would not, however, affect the express provision that if it did sell, it sold to them under the authority and in the name of the State, in other words, sold to the State the articles sold. This inference is corroborated by the provisions of Sect. 18., provid-

ing for the division of the profits in each county of the business of the sale of alcoholic liquors and beverages, as carried on under the Statute by the County Dispensary Board. Those profits are arbitrarily divided differently in different counties. In some one-third goes to the municipality in which the Dispensary may be located; in another one-half goes to such municipality; in some counties one-third goes to the County School fund; in other counties only one-fifth goes to that fund. This evidences that the State retained to herself the entire control of the profits to be distributed as it saw fit, as its own money and with the power at any time by statute to repeal any existing mandate for the division of these profits, and make another and wholly different distribution.

It is claimed that inasmuch as the statute only undertakes to deal directly with the distribution of the profits of the business, the inference is that the balance was devoted by the State to the payment of the expenses of that business and incidentally as part of those expenses to the payment of the persons from whom the articles necessary for the business were purchased. It is contended that this constitutes such balance a sort of trust fund to be held by the County Dispensary Board for those specific parties, thus constituting the persons who might be the holders of that indebtedness, which must be deducted before the profits are ascertained, beneficiaries directly This result would be a very interested in this fund as a trust fund. strained inference under the circumstances. The direction that the profits must be ascertained and distributed may be a direction by the State to its agents to pay the expenses of the business before ascertaining and distributing the profits, but it is no more a segregation to the creditors individually of any part of the funds to pay

to the creditors individually of any part of the funds to pay
the expenses than is the act of any prudent business man
who pays the expenses of his business before he spends his
profits. The State could at any time interfere and direct that these
expenses should not be paid until vouched or audited as the State
saw fit, or in fact, it might expressly prohibit their payment until
directed by an Act of the Legislature, or if — chose to go that length
might wholly forbid the payment. The method adopted by the
State for the payment of the expenses of the business authorized by
it in no sense can be fairly construed as constituting the proceeds of
the State's own property which could be used by it for the payment
of those or any other expenses, a trust fund to which the parties to
whom the expenses should be paid are entitled to look to as a specific
fund assigned to them of which they are the beneficiaries.

The provisions of Sections 11 and 13 of the Act of 1907 lend no additional strength to the argument in favour of the inference sought to be drawn by the plaintiff. Those sections prescribe the methods to be followed by the State's agents in the control of the State's business so as to secure its efficient and safe performance. In considering this very section 6 of the Act of 1907 the Supreme Court of South Carolina held that the County Dispensaries were conducted under the authority and in the name of the State. "Therefore the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State and the debts due for goods sold them are the debts of the State." (Glass Co. v. State, 87 S. C. 288.)

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In the same case the State court affirmed the conclusion of that court in the case of State v. Dispensary Commission, 79 S. C. 325, viz., "The General Assembly may require the public funds or any part of them to be put in any place or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent for the disbursements of these funds to its c. ditors." In the same case (State v. The Dispensary Commission, 79 S.C. 326), the Supreme Court quoted and followed the Supreme Court of the United States in the case of Buchanan v. Alexander, 4 Howard, 20, to the effect that "so long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the Treasury." Under the construction of the statute of 1907, as decided in the case of Glass Co. v. State, 87 S. U. 270, and the principle decided in State v. The Dispensary Commission. 79 S. C. 316, the Supreme Court of the State of South Carolina has decided that the proceeds of the articles purchased by the County Dispensary Board under the authority given in the Act of 1907 was the property of the State. That being the case it follows that it is not the property of the plaintiff in this case, and plaintiff has no enforcible interest in it, and that this action is an attempt on the part of the plaintiff to subject this fund which is the property of the State to the payment of the claim it holds against the State. To that proceeding the State is a necessary party. Inasmuch as the State has not consented to allow itself to be sued this Court has no jurisdiction of any action against it, and can have no jurisdiction of the action of the plaintiff in this case against the In the case of Murray v. Wilson Distilling Co., 213 U. S. 151, the Supreme Court of the United States decided that it

was apparent that the purchases which were made by the State's officers or agents of liquors for consumption in South Carolina under the Dispensary Acts prior to the Act of 1907, were purchases made by the State for its account, and therefore that the relation of debtor and creditor arose from such transactions between the State and the persons who sold the liquor. It further held that the proceeds of such liquors when sold by the State's officers or agents belonged to the State, and that suits by the vendors against the parties in whose hands those State funds were, so as to compel the application to the debts claimed by the vendors, of the proceeds of the liquors in the hands of such parties, were in effect suits against the State, and that as such came within the express prohibition of the XIth Amendment to the Constitution of the United States, and that this Court could have no jurisdiction of them. The Supreme Court of the United States held further in the same case that by engaging in a business the State does not thereby lose the exemption from suit given to it under the XIth Amendment to the United States Constitution. It follows that upon the facts found in this case under the principles adjudged by the Supreme Court of South Carolina in the two cases cited, and by the Supreme Court of the United States in Murray v. Wilson Distilling Co., supra, that this court has no jurisdiction of this cause as being in effect a suit against the State or one to which the State is a necessary party, and that the demurrer interposed by the defendants to the jurisdicion of the court must be sustained. Although it would appear to follow also from the principles adjudicated in the decisions referred to that the plaintiff had no such interest in the fund received by the defendants as would entitle it to recover in this action against the

defendants individually as for money had and received, and that having no such interest section 6 of the Acts of 1910 divested no right of nor impaired any contract held by the plaintiff so as to contravene the provisions of the United States Constitution, yet as the court finds that for the reasons stated it has no jurisdiction of the cause as being one in effect against the State, this adjudication is limited to one of dismissal on that ground, and a formal judgment to that effect will be entered.

19 June 1912.

HENRY A. M. SMITH, U. S. Judge for S. C.

Order Dismissing Complaint.

Filed June 19, 1912.

This cause having duly come on to trial, and having been tried upon the pleadings and testimony, and counsel for all parties having been heard, it is now in pursuance of the opinion in this cause this day filed:

Adjudged That the complaint herein be dismissed.

19 June 1912.

HENRY A. M. SMITH, U. S. Judge for S. C.

To which rulings of law the plaintiffs thereupon duly entered the

following exceptions, to wit:

1. That the court erred in holding that it had no jurisdiction of this cause as being one in effect against the State, whereas the court should have held that the suit is one brought against the defendants, who claiming to act as officers of the State and under colour of an unconstitutional statute, committed acts of wrong and injury to the rights and property of the plaintiff acquired under contract with the State, and is to recover money from such defendants

with the State, and is to recover money from such defendants
unlawfully taken by them from the plaintiff in behalf of
the State or for compensation in damages, and therefore is
not a suit against the State or one to which the State is a necessary

party.

2. That the Court should have ruled as a matter of law that upon the undisputed facts the fund of \$4,963.13 held by the Richland County Dispensary Board for plaintiff on February 23, 1910, as well as the additional fund of \$12,586.64, or the total fund of \$17,550.07 held by the said Richland County Dispensary Board for plaintiff on December 13, 1910, was a fund to which the plaintiff was and is entitled, and that it came into the hands of defendants

on 13 day of December, 1910, under circumstances which fully notified the defendants that ex acquo et bono they were bound to pay it over to the plaintiff, and that the action of the defendants in taking the said funds on December 13, 1910, and in turning said funds over to their successors in office on the 22 March was tortious and unlawful, after the notice given defendants by plaintiffs on November 22, 1910, and in violation of the rights secured to the plaintiff by section 10 of Article I and the 14th Amendment of the United States Constitution, and leaves the defendants personally liable to plaintiff for the amount.

3. That the court erred in not ruling as a matter of law that upon the undisputed facts the letter of W. F. Stevenson to Mr. William H. Lyles, attorney, dated November 20, 1909, and set forth in paragraph eleven of the complaint, was a contract binding upon the State Dispensary Commission, and also upon the State of South Carolina, its agents and servants, in which the plaintiff was protected

by section 10 of Article I. and the 14th Amendment of the Constitution of the United States against the subsequent action of defendants purporting to act as the State Dispensary

Commission in violation thereof.

4. That the court erred in not ruling as a matter of law that the dealings between the plaintiff and the Richland County Dispensary Board under the Act of 1907 created a contract between the State of South Carolina and the plaintiff binding upon the said State of South Carolina, its agents and servants, as well as upon the said Richland County Dispensary Board, and under which the plaintiff had the remedy to secure performance thereof by a writ of mandamus directed to the said Richland County Dispensary Board, or other appropriate remedy, and in which the plaintiff was protected by section 10 of Article I. and the 14th Amendment to the Constitution of the United States, and that therefore the plaintiff was entitled to recover even though it had no such interest in, lien upon or title to the specific fund of \$17,550.07 as to give it a definite vested interest therein.

5. That the Court erred in ruling as a matter of law that the fund of \$17,550.07, including the fund of \$4,963.13, due February 23, 1910, and the fund of \$12,586.64, due on the 13 December 1910, was the property of the State of South Carolina at all times, and that the plaintiff was only a creditor of the State of South Carolina, and possessed no such interest in, lien upon or title to this specific fund, either before or after February 23, 1910, as to give the plaintiff any right in or to this fund or any part thereof, which was protected by the Constitution of the United States, plaintiff at all times being merely a creditor of the State of South Carolina as to

this money; that therefore the act of the defendants in taking this money on December 13, 1910, and subsequently in disposing of the same, claiming to act as State Dispensary Commission, and so as agents of the State of South Carolina by virtue of the authority conferred upon them by section 6 of the Act of 1910, did not infringe any rights of the said plaintiff in or

to said money, or any portion thereof in violation of any provisions

of the Constitution of the United States. 6. That the Court should have ruled as a matter of law that by virtue of the dealing between plaintiff and the Richland County Dispensary Board of the State of South Carolina prior and subsequent to February 3, 1910, a contract was created by and between plaintiff and the Richland County Dispensary Board, as well as between the plaintiff and the State of South Carolina, which said contract was binding upon said Richland County Dispensary Board as well as upon the State of South Carolina and its agents and servants, and the rights of plaintiff in which were protected by section 10 of Article I., and the 14th Amendment of the Constitution of the United States, and that under such contract the plaintiff had a remedy at law on mandamus addressed to the Richland County Dispensary Board, or by other appropriate remedy to secure the payment of the said sum of money, and that the Act of 1910 as well as the acts of the defendant done in pursuance thereto were an infringement on the rights of the plaintiff, and so in violation of section 10 of Article I. and the 14th Amendment to the Constitution of the United States.

7. That the court erred in ruling as a matter of law that this suit is in effect a suit against the State of South Carolina, and to which the said State is a necessary part and so is within the expressed prohibition of the 11th Amendment of the Constitution of the United States, whereas the court should have ruled that the suit is one brought by plaintiff to recover money illegally

confiscated and redress grievances illegally inflicted by the individual defendants claiming to act as the State Dispensary Commission by virtue of authority given them by section 6 of the Act of 1910, when the said Act is and always has been null and void because in violation of section 10 of Article I. and the 14th Amendment of the Constitution of the United States and therefore affording no protection or colour for the illegal acts of the defendants. Whereupon the counsel for the plaintiff dud then and there propose the aforesaid challenges and exceptions to the rulings of the said court and prayed that their bill of exceptions might be signed and sealed, and it is signed and sealed accordingly this 16 day of November 1912.

The time for settling same having by due orders heretofore made

been extended to this date.

HENRY A. M. SMITH, U. S. Judge for S. C. 49

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Petition for Writ of Error.

Filed 23 May, 1914.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff,

W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. BRICE, Defendants.

Considering itself aggrieved by the judgment of the District Court of the United States for the Eastern District of South Carolina, dismissing its Complaint, which order or judgment was filed and entered on June 19, 1912, the plaintiff hereby prays a writ of error from said order and judgment, to the Supreme Court of the United

States. Your petitioner would further represent that heretofore, to wit, on December 7th, 1912, it filed its petition for a writ of error from the same order and judgment to the United States Circuit Court of Appeals for the Fourth Circuit, which writ of error was allowed and issued on said date, and citation was issued thereon, and the record and proceedings in said cause carried to the said United States Circuit Court of Appeals for the Fourth Circuit, which by its judgment filed on July 10th, 1913, affirmed the judgment of the said District Court of the United States for the Eastern District of South Carolina.

That your petitioner at the time of carrying the said case to the United States Circuit Court of Appeals was of opinion that this was the proper method of carrying same to the Supreme Court of the United States for final decision, it being always petitioner's intention and purpose to seek such final review by said Supreme Court of the adverse judgment of said District Court, in the event that such was necessary. But your petitioner is now advised that it was mistaken in its assumption that said Circuit Court of Appeals had jurisdiction over said judgment on such writ of error to said District Court and that, on the contrary, said Circuit Court of Appeals was absolutely without jurisdiction, and its judgment rendered thereon was a nullity, because said case is controlled by Section 5 of the Judiciary Act of March 3rd, 1891, now appearing as Section 238 of the Judicial Code, approved March 3rd, 1911, and by reason thereof, the jurisdiction on a writ of error to said District Court was vested exclusively in the Supreme Court of the United States.

And your petitioner is further advised that the time has not expired within which it is entitled as of right to a writ of error from the Supreme Court of the United States to said District Court to reverse said judgment. And it, therefore, prays that such writ of error be allowed and an order passed fixing the amount of a costs bond. Assignment of errors herewith.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff.

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Order Allowing Writ of Error.

Filed May 29, 1914.

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff,

W. J. MURRAY and Others, Defendants.

On hearing the petition for writ of error herein filed 23 May 1914, and it appearing that awrit of error has already been allowed from the judgment in this case to the Circuit Court of Appeals of the United States for the Fourth Circuit, which Court upon the hearing of the said writ of error affirmed the judgment below, and it further appearing from the said petition that in the opinion of counsel filing the said petition, that desiring to take a writ of error to the said Circuit Court of Appeals from the Supreme Court of the United States they are under the conviction that such writ would not lie because the judgment of the said Circuit Court of Appeals affirming the judgment of this Court was a nullity inasmuch as the said Circuit Court of Appeals was absolutely without jurisdiction, the said writ of error from the judgment in this Court, having been improperly taken to the said Circuit Court of Appeals, whereas it should have been taken to the United States Supreme Court, and it appearing further by said petition that the petitioners desire to have the former judgment made in this Court in this cause reviewed by the Supreme Court of the United States by a writ of error to this Court from that Court, and desire for that purpose to take out a new writ of error to this Court from the Supreme Court of the United States so as to put it beyond peradventure that they may be able to have the said judgment made by this Court reviewed by the Supreme Court of

the United States without any question on the ground of the inability of the Supreme Court of the United States to review said judgment by the way of a writ to the Circuit Court of Appeals in lieu of a writ of error direct to this Court, it is thereupon:

Ordered That the writ of error do issue upon the execution of a bond by the petitioner the Carolina Glass Company, in the usual form of a bond for costs on appeal without a supersedeas, in the sum of two hundred and fifty (\$250.00) dollars.

HENRY A. M. SMITH.

U. S. Judge for S. C.

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Assignment of Errors.

Filed May 23, 1914.

UNITED STATES OF AMERICA,

Eastern District of South Carolina:

In the District Court.

CAROLINA GLASS COMPANY, Plaintiff.

VS.

W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice, Defendants.

Comes now the plaintiff and files the following assignment of errors, upon which it will rely upon its prosecution of the writ of error in the above entitled cause.

I. That the United States District Court for the Eastern District of South Carolina erred in sustaining the defendants' fourth ground of demurrer to the plaintiffs' complaint, which was as follows, to-wit:

"It appears from the face of the complaint that this is an action against the State to collect an alleged debt, and hence the complaint loes not state any cause of action of which this court has jurisdiction."

When the court should have overruled the demurrer because the suit is one brought against the defendants who, claiming to act as officers of the State, and under color of an unconstitutional statute, committed acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State, and is to recover money from such defendants unlawfully taken by them

from the plaintiff in behalf of the State or for compensation in damages, and, therefore, it is not a suit against the State, or one to which the State is a necessary party, within the provisions of the 11th Amendment to the Constitution of the

United States.

II. That the court erred in ruling as a matter of law, upon the undisputed facts, that this suit is a suit against the State of South Carolina and to which the said State is a necessary party, and so is within the express prohibition of the 11th Amendment of the Con-

stitution of the United States.

Whereas the court should have ruled that the suit is one brought by plaintiff to recover money illegally confiscated and redress grievances illegally inflicted by the individual defendants, claiming to act as the State Dispensary Commission by virtue of the authority given them by section 6 of the Act of 1910, when the said Act is, and always has been null and void, because in contravention of section 10 of Article I, and the 14th Amendment of the Constitution of the United States, and, therefore, afforded no protection or color of authority for the illegal acts of the defendants.

Wherefore the said Carolina Glass Company, plaintiff in error,

prays that the judgment of the District Court of the United States for the Eastern District of South Carolina, be reversed, and that the said District Court be directed to enter a judgment in favor of the plaintiff and plaintiff in error in this cause against the said defendants, W. J. Murray, John McSween, A. N. Wood, Avery Patton, and J. S. Brice, and each and every of them for the sum of

\$17,550.07, together with interest thereon from the 13th day of December, 1910, at the rate of seven per cent. per annum, and for the costs.

WM. H. LYLES,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff in Error,
Plaintiff in Lower Court.

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Bond for Costs.

Filed May 29, 1914.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of South Carolina.

CAROLINA GLASS COMPANY, Plaintiff in Error,

W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice. Defendants in Error.

Bond.

Know all men by these presents, That we, Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, are firmly held and bound unto W. J. Murray, John McSween, A. N. Wood, Avery Patton and J. S. Brice in the sum of two hundred and fifty (\$250) dollars, to be paid to said parties, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of April, 1914.

Whereas the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the District Court of the United States for the Eastern District of South Carolina,

Now, Therefore, the condition of this obligation is such that if
the above named plaintiff in error shall prosecute its said
writ of error to effect and answer all costs and damages
that may be adjudged, if it shall fail to make good its plea,
then this obligation to be void, otherwise to remain in full force
and effect.

In Witness Whercof, the said Carolina Glass Company, as principal, and United States Fidelity & Guaranty Company, as surety, have hereunto set their hands and affixed their seals, this 25th day of April, I. D. 1914.

CAROLINA GLASS COMPANY, [L. s.] By RAVENEL L. PATTERSON,

Its Manager, as Principal.

UNITED STATES FIDELITY & GUARANTY COMPANY, L. S. By ROB'T MOORMAN,

A. W. BOLLIN,

Its Attorneys in Fact, as Surety.

In the presence of:

CARRIE YOUNGINER.

W. M. RISER.

As to Carolina Glass Company;

J. H. BOLLIN, JR.,

S. A. MILLFORD. As to United States Fidelity & Guaranty Company.

Approved May 29, 1914.

HENRY A. M. SMITH, U. S. Judge, S. C.

STATE OF SOUTH CAROLINA, 58 Richland County:

Personally appears W. M. Riser, who being duly sworn, says that she saw Carolina Glass Company, by Ravenel S. Patterson, its Manager, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned, and that she with Carrie Younginer witnessed the execution thereof. W. M. RISER.

Sworn to before me, this 1st day of May, A. D. 1914. W. T. NELSON. Notary Public for S. C.

STATE OF SOUTH CAROLINA. Richland County:

Personally appears S. A. Millford, who being duly sworn, says that he saw United States Fidelity & Guaranty Company, by A. W. Bollin and Robert Moorman, its Attorneys in Fact, sign, seal and as its act and deed, deliver the above written bond for the uses and purposes therein mentioned and that he with J. H. Bollin, Jr., witnessed the execution thereof. S. A. MILLFORD.

Sworn to before me, this Sworn to before the 2nd day of May, 1914. J. HUGHES COOPER, [L. s.]

Notary Public for S. C.

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Writ of Error.

Filed May 29, 1914.

THE UNITED STATES OF AMERICA, 88:

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of South Carolina, Greeting:

Because in the records and proceedings, and also, in the rendition of the judgment of a plea which is in the said District Court, before you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error has happened, to the great damage of the said Carolina Glass Company, as by its Complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 18th day of June, 1914, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness Hon. Edward Douglass White, Chief Justice of the United States, this 29 day of May, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States of America.

[Seal United States District Court, Eastern District, So. Ca.]

RICH, M. HUTSON,
Clerk District Court of the United States
for the Eastern District of South Carolina.

The foregoing writ is hereby allowed. May 29, 1914.

HENRY A. M. SMITH,
Judge United States District Court for
the Eastern District of South Carolina.

61 THE UNITED STATES OF AMERICA, 88:

Citation.

The President of the United States of America to William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., on the 18th day of June, 1914, within 30 days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States for the Eastern District of South Carolina, wherein Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness Hon. H. A. M. Smith, Judge of the United States District Court for the Eastern District of South Carolina, this 29 day of May, A. D., 1914, and in the one hundred and thirty-eighth year of the Sovereignty and Independence of the United States of

America.

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[Seal United States District Court, Eastern District, So. Ca.]

HENRY A. M. SMITH, United States Judge for S. C.

Attest:

RICH. W. HUTSON, Clerk United States District Court for the Eastern District of South Carolina.

62 United States of America, Eastern District of South Carolina:

In the District Court.

I, Richard W. Hutson, Clerk of the District Court of the United States for the District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of Carolina Glass Company, Plaintiff, versus W. J. Murray, et al., Defendants, as appears by the records now on file in my office.

Given under my hand and seal of said Court at Charleston, S. C., in the District aforesaid, this 16 day of June, A. D. 1914.

[Seal United States District Court, Eastern District So. Ca.]

RIGH, W. HUTSON.

Writ of Error.

THE UNITED STATES OF AMERICA, 88:

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of South Carolina, Greeting:

Because in the records and proceedings, and also, in the rendition of the judgment of a plea which is in the said District Court, before you, between Carolina Glass Company, plaintiff, and William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, defendants, a manifest error has happened, to the great damage of the said Carolina Glass Company, as by its Complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 18th day of June 1914 within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should

Witness Hon. Edward Douglass White, Chief Justice of the United States, this 29th day of May, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States

64 of America.

[Seal United States District Court, Eastern Dist. S. C.]

RICH. W. HUTSON,

Clerk District Court of the United States for the Eastern District of South Carolina.

The foregoing writ is hereby allowed. 29 May, 1914.

HENRY A. M. SMITH,

Judge United States District Court for the Eastern District of South Carolina.

65 [Endorsed:] Docket 251. The United States of America.
Carolina Glass Company, Plaintiff, vs. William J. Murray,
John McSween, Adolphus N. Wood, Avery Patton and James S.
Brice, Defendants. Writ of Error. Filed May 29, 1914. Richard
W. Hutson, C. D. C., U. S. S. C.

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Citation.

The President of the United States of America to William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., on the eighteenth (18th) day of June, 1914, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States for the Eastern District of South Carolina, whereir Carolina Glass Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness Hon. H. A. M. Smith, Judge of the United States District Court for the Eastern District of South Carolina, this 29th day of May, A. D., 1914, and in the one hundred and thirty-eighth year of the Sovereignty and Independence of the United States of America.

[Seal United States District Court, Eastern Dist. S. C.]

HENRY A. M. SMITH, United States Judge for S. C.

Attest:

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RICH. W. HUTSON,

Clerk United States District Court

for the Eastern District of South

Carolina.

[Endorsed:] Docket 251. The United States of America, Carolina Glass Company, Plaintiff, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice, Defendants. Citation. Filed May 29, 1914. Richard W. Hutson, C. D. C., U. S. S. C. Service of the within Citation acknowledged and copy received this 30th day of May, 1914. B. L. Abney, Attorney for Defendants.

Endorsed on cover: File No. 24,314. E. South Carolina, D. C. U. S. Term No. 570. Carolina Glass Company, plaintiff in error, vs. William J. Murray, John McSween, Adolphus N. Wood, Avery Patton and James S. Brice. Filed July 16, 1914. File No. 24,314.